IN THE COUNTY COURT OF VICTORIA

Revised
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Suitable for Publication

AT MELBOURNE
CRIMINAL JURISDICTION

CR 16-01582
CR 16-01583

DIRECTOR OF PUBLIC PROSECUTIONS

v

KEROVPE MARDIRIAN
GUISEPPE CATALANO

JUDGE:	HIS HONOUR JUDGE DEAN
WHERE HELD:	Melbourne
DATE OF HEARING:	4 March 2019 – 7 March 2019; 12 March 2019; 11 April 2019
DATE OF SENTENCE:	12 April 2019
CASE MAY BE CITED AS:	DPP v Mardirian
MEDIUM NEUTRAL CITATION:	[2019] VCC 523

REASONS FOR SENTENCE

Subject:

Catchwords: Theft; Obtaining property by deception; Obtaining financial property by deception; Theft of certificate of title; Loan secured against fraudulently registered property; General deterrence; Specific deterrence; Appropriate case for disparate sentences

Legislation Cited:

Cases Cited:

Sentence:

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Mr P. Kounnas	Office of Public Prosecutions
For Offender Mardirian	Mr T. S. Lynch	Melinda Walker Solicitors
For Offender Catalano	Mr D. Sheales	Gil Boffa & Associates

HIS HONOUR:

1 Guiseppe Catalano and Kerovpe Mardirian, following a trial in this court that occupied five sitting days, you were found guilty by the jury of the following charges –

2 Guiseppe Catalano, one charge of theft contrary to s.74 of the *Crimes Act 1958*. The maximum penalty for that offence is ten years imprisonment.

3 Kerovpe Mardirian, one charge of obtaining property by deception, contrary to s.82(1) of the *Crimes Act 1958*. The maximum penalty for that offence is ten years imprisonment. And;

4 Two charges of obtaining a financial advantage by deception, contrary to s.81(1) of the *Crimes Act 1958*. The maximum penalty for that offence is ten years imprisonment.

5 Catalano, you have admitted a criminal history in relation to a number of street offences, which are irrelevant for sentencing purposes in this case.

6 Mardirian, you have admitted a criminal history in relation to offences of dishonesty. Your history is of significance for sentencing purposes in this instance, as you have previously served a term of imprisonment for like offending. This is a subject that I will return to in due course.

7 The circumstances giving rise to your convictions may be described as follows –

8 In 2005 Catalano was introduced to Mr Simon Braham, a surgeon who engaged him to perform legal work in relation to a deed of separation between Mr Braham and his partner. Following this, Catalano was then engaged by Braham to complete a conveyance of an investment property located at 10A Mitford Street, St Kilda, that Braham had purchased on 16 September 2006.

9 At all relevant times Catalano held himself out as a legal practitioner when in fact you had relinquished your right to practice to the Law Institute of Victoria in 1998. You made arrangements with Braham's banker to attend settlement on 16 November 2006, and as the property was not subject to a mortgage, you took possession of the duplicate Certificate of Title and Discharge of Mortgage.

10 By their verdict the jury was satisfied that you dishonestly appropriated the documents by failing to affect registration at the Land Titles Office, as you were required to do. The evidence does not reveal why you did this but it is probable that your offending occurred for financial reasons.

11 The jury rejected your defence that an associate of yours, Sandra Miller, stole the documents. I am satisfied that she had nothing to do with your offending, or the offences for which the jury convicted your co-accused, Mardirian.

12 The evidence does not reveal how or why the documents came to be in possession of Mardirian, but on 24 December 2009 they were used by him to register the property in the name of a corporation owned and operated by him, Strategic Property Acquisitions Pty Ltd (SPA). This was affected by Mardirian falsely representing to the Land Titles Office that SPA had validly acquired the property from Heather James, the deceased former owner of it, and that she had executed the transfer of land. The jury found Catalano not guilty of this charge.

13 Following registration Mardirian used the property as security for two loans from Alcor Nominees, an investment company operated by Mrs Claire Markov and her husband, in sums of $225,328.08, and $46,049.68 respectively.

14 The offending was revealed when Mr Braham sought to refinance his CBA facilities. Alcor Nominees, as mortgagee in possession, sold the property and recovered the monies it had advanced. Following Supreme Court litigation,

which was defended by Catalano, the Registrar of Titles paid an award of damages to Braham in relation to his losses.

15 In the case of Catalano, your offending is a serious example of the offence of theft. The documents that you stole, as you well knew, could be used to affect registration. I do not accept that these were mere pieces of paper, as was submitted on your behalf. Your dishonesty in not following Mr Braham's instructions is correspondingly serious and the sentence I impose must be calculated to deter others from offending in this manner. Your conduct in holding yourself out as a legal practitioner enabled you to commit the offence and, in my opinion, this context compounds the seriousness of your offending.

16 This sentence must also be calculated to protect purchasers of property and the land title system that regulates purchases in this state. It is also clear that you have little or no remorse for what you have done, and the account you provided to investigating police was rejected by the jury.

17 I have received in evidence a Victim Impact Statement of Simon Braham setting out the personal and financial impact and toll upon him of your offending. I accept that it has caused him significant hardship.

18 In the case of Mardirian, the offending may also be described as serious. Whilst it is not clear how the documents came to be in your possession, the jury rejected your evidence in relation to the role of Sandra Miller, and as I have already stated, in my opinion she had nothing to do with your offending. Having obtained the documents, you used them for your own financial purposes and it appears that simply dissipated the monies advanced to you by Mrs Markov.

19 You too have shown no remorse for your dishonesty, and as I have already observed, you have a criminal history in that regard.

20 The sentence I impose upon you must also be calculated to protect the land title registration system, by deterring others from offending in this manner. Specific deterrence is also a significant sentencing consideration in your case.

21 I now turn to your respective personal circumstances.

22 Guiseppe Catalano, you were born on 25 September 1959 and are now aged 59. You have admitted a criminal history which, as I have said, is of no relevance for sentencing purposes in this case. You were admitted to practice as a legal practitioner in Victoria in 1984 and practiced with your then wife, with whom you had two children.

23 Following investment in a boarding house, which was unsuccessful, you were declared bankrupt in 1997 and relinquished your practising certificate in 1998. Thereafter, you were employed by your brother in his media business. You have three other children from your second marriage, which is also dissolved. Your 17-year-old son, who is completing VCE this year, resides with you.

24 I have received in evidence a number of character references and I accept that you are close to your children and have the support of your extended family. I have also received in evidence a body of medical reports setting out your precarious and complex physical health. You suffer from coronary disease and poor renal function. I accept that imprisonment would, in your case, have an adverse effect upon you.

25 The Prosecution accept that in all the circumstances of your case, it is open to me to wholly suspend any term of imprisonment that I impose.

26 Kerovpe Mardirian, you were born on 14 November 1961 in Armenia and you are now aged 57. You migrated to Australia from Lebanon in 1978 with your family.

27 On 16 May 2002, in the County Court of Victoria, you were sentenced to four years imprisonment with a non-parole period of three years, in relation to 11 charges of obtaining property by deception and obtaining a financial advantage by deception. That sentence was confirmed by the Supreme Court of Victoria on appeal.

28 Your offending in that instance concerned you defrauding friends and associates in the total sum of $512,000, which monies were primarily lost by you gambling at Crown Casino. In this instance the total sum of your offending is in excess of $800,000, although Mrs Markov and Mr Braham ultimately recovered their losses.

29 I accept that you have the support of your daughters and the responsibility of caring for your elderly mother. You are employed as a B Double truck driver, engaged in interstate transport. It would appear that you are a hard worker and it would also appear that you are now in good health. However, in my opinion, your prospects for rehabilitation are to be approached with caution, and as I have said, there is no remorse in your case.

30 Your counsel submitted that it would be open to me to impose a combination sentence. However, in my opinion, such a disposition would not meet the purposes for which this sentence is to be imposed.

31 I accept that I am now sentencing you both for offending that occurred, in your case Catalano, approximately 13 years ago, and in your case, Mardirian, between nine and ten years ago. This delay is relevant as neither of you have been convicted of any further offences in that time. Although, in the case of Mardirian, there are eight outstanding charges contrary to the bankruptcy provisions of the *Bankruptcy Act 1996* (Cth) in the sum of approximately $1.8 million that are due to be heard in this court in May 2019.

32 Furthermore, I have had regard to the principles of parity in sentencing in this

case. However, by reason of the different offences you have both been convicted of, and their respective gravity, together with your quite distinct personal circumstances, it is clearly open to me, and indeed appropriate for me, to impose disparate sentences upon you.

33 In the result, the sentence of the court is as follows –

34 In relation to the charge of theft, Guiseppe Catalano, you are convicted and sentenced to be imprisoned for 18 months. I direct that this sentence be wholly suspended for a period of two years.

35 Kerovpe Mardirian, in relation to Charge 2, the charge of obtaining property by deception, you are convicted and sentenced to be imprisoned for two years.

36 In relation to Charge 3, the charge of obtaining the financial advantage by deception, you are convicted and sentenced to be imprisoned for 18 months.

37 In relation to Charge 4, the charge of obtaining a financial advantage by deception, you are convicted and sentenced to be imprisoned for 12 months.

38 Nine months of the sentence on Charge 3, and three months of the sentence on Charge 4, are to be served cumulatively on each other and cumulatively on the sentence imposed on Charge 2.

39 This makes for a total effective term of imprisonment of three years.

40 I direct that you serve two years imprisonment before becoming eligible for release on parole.

41 I declare that you have served 31 days by way of pre-sentence detention, not including today.

42 COUNSEL: As Your Honour pleases.

43 HIS HONOUR: Mr Catalano, I'm required to advise you that the sentence that I have imposed upon you is suspended for a period of two years. If during that period you commit another offence punishable by imprisonment, you may be brought back before this court and re-sentenced in respect of the charge that I have sentenced you for. Do you understand that?

44 ACCUSED CATALANO: Yes sir.

45 HIS HONOUR: Thank you. There are no further orders required?

46 COUNSEL: No, Your Honour.

47 HIS HONOUR: Thank you.